

Wilco Energy Corporation and United Mine Workers of America. Case 26-CA-7454

March 27, 1981

SUPPLEMENTAL DECISION AND ORDER

On December 6, 1979, the National Labor Relations Board issued a Decision and Order¹ in the above-entitled proceeding in which it ordered Respondent, *inter alia*, to make whole George Dalton and Jerry Bjorgum for any loss of pay they may have suffered resulting from Respondent's unfair labor practices against them in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, herein called the Act. On July 25, 1980, the United States Court of Appeals for the Eighth Circuit entered its decree enforcing in full the backpay provisions of the Board's Order. A controversy having arisen over the amount of backpay owed the discriminatees, the Acting Regional Director for Region 26 duly issued and served on the parties the backpay specification herein which sets forth the amounts of backpay allegedly due the discriminatees. Respondent has failed to timely file an answer to the backpay specification, and its allegations, therefore, stand uncontroverted.

On October 3, 1980, counsel for the General Counsel filed a Motion for Summary Judgment. Subsequently, on October 14, 1980, the Board issued an order transferring the proceeding to the Board and Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted.² Respondent has not filed a response to the Notice To Show Cause. Thereafter, on October 17, 1980, counsel for the General Counsel filed a motion to strike Respondent's answer and renewed motion to transfer case to the Board for summary judgment, and, on November 24, 1980, a motion to strike supplemental answer and opposition to motion to reinstate hearing.³ Both motions were served on the parties, including Respondent, by certified mail.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54(c) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides in relevant part with respect to a backpay specification:

¹ 246 NLRB 851.

² The Board also ordered the hearing to be postponed indefinitely.

³ We find it unnecessary to pass on either motion inasmuch as Respondent's answer and supplemental answer were untimely filed and are not accepted.

(c) *Effect of Failure to answer or to plead specifically and in detail to the Specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without . . . notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The Acting Regional Director's backpay specification and notice of hearing, dated September 5, 1980, was sent to Respondent by certified mail. According to the uncontroverted allegations of the motion to strike supplemental answer, counsel for the General Counsel contacted counsel for Respondent by telephone on September 12, 1980, in regard to the backpay specification. Respondent accepted delivery of the backpay specification on September 13, 1980. The backpay specification stated that Respondent should file with the Regional Director an answer to said specification within 15 days from being served with the specification. On October 1, 1980, Respondent sent its answer to the backpay specification. The Board's Regional Office received Respondent's answer on October 3, 1980. In addition to filing a late answer, Respondent failed to state in its answer any reason as to why it did not meet the filing date as prescribed under the Board's Rules and Regulations, nor did Respondent request an extension of time to file its answer.

Further, although Respondent apparently submitted a supplemental answer and motion to reinstate hearing, it made no response to the counsel for the General Counsel's motion to strike said answer and motion, wherein it was alleged that Respondent did not show good cause for failure to file a timely answer. Nor did Respondent file a response to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with the rule set forth above, the Board deems Respondent to have admitted all allegations of the backpay specification to be true and that there are no matters in issue requiring a hearing. Accordingly, we hereby grant the General Counsel's Motion for Summary Judgment, and shall issue an appropriate order.

On the basis of the backpay specification and the entire record in this case, the Board makes the following findings of fact:

We find that George Dalton and Jerry Bjorgum are entitled to be made whole under the Board's Order and the court's decree by payment to them of the amounts as summarized and calculated in the General Counsel's backpay specification; namely, by payments of \$14,698 to George Dalton; and \$0

to Jerry L. Bjorgum, plus interest accrued to the date of payment, minus the tax withholdings required by Federal and state laws.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Wilco Energy Corporation, Ozark, Arkansas, its officers, agents, successors, and assigns, shall pay to

the employees involved in this proceeding the following amounts:

George Dalton	\$14,698
Jerry L. Bjorgum	-0-

Interest thereon is to be computed in the manner prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977), minus the tax withholding required by Federal and state laws.